

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 13-CR-0164(2) (PJS/LIB)

Plaintiff,

v.

ORDER

PATRICIA ANN MCQUARRY,

Defendant.

A jury convicted defendant Patricia McQuarry of one count of conspiracy to defraud the United States and two counts of making false, fictitious, or fraudulent claims against the United States in connection with McQuarry's filing of fraudulent claims for tax refunds. ECF No. 220. The Court sentenced McQuarry to 40 months in prison and three years of supervised release. ECF No. 236. The United States Court of Appeals for the Eighth Circuit affirmed McQuarry's conviction on direct appeal. ECF Nos. 277, 278.

This matter is before the Court on McQuarry's motion, pursuant to Fed. R. Civ. P. 60(b)(4), for relief from judgment. The Federal Rules of Civil Procedure do not apply in criminal proceedings, however, and Fed. R. Civ. P. 60 is not an appropriate vehicle to attack a criminal judgment. *See United States v. Campbell*, 96 F. App'x 966, 968 (6th Cir. 2004) ("If Campbell literally intended to raise this argument under a civil rule, his argument fails because the Federal Rules of Civil Procedure do not apply to criminal

proceedings.”); *United States v. Abney*, 39 F. App’x 12, 14 (4th Cir. 2002) (per curiam) (“because the Federal Rules of Civil Procedure do not provide a vehicle by which Landrick may challenge his criminal judgment, we reject his contention the district court abused its discretion in denying the post judgment Rule 59(e) and 60(b) motions”); *United States v. Mosavi*, 138 F.3d 1365, 1366 (11th Cir. 1998) (per curiam) (“Rule 60(b) simply does not provide for relief from judgment in a criminal case, and as such the defendant cannot challenge the criminal forfeitures at issue under Fed. R. Civ. P. 60(b).”). The Court therefore denies McQuarry’s motion.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT defendant Patricia McQuarry’s Fed. R. Civ. P. 60(b)(4) motion for relief from judgment [ECF No. 280] is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 30, 2016

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge